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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/761,153

01/20/2004

Daniel G. Hess

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12/13/2006

GARDNER GROFF SANTOS & GREENWALD, P.C.
2018 POWERS FERRY ROAD
SUITE 800
ATLANTA, GA 30339

EXAMINER

GRAYSAY, TAMARA L

ART UNIT

PAPER NUMBER

3636

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/761,153

Applicant(s)

HESS ET AL.

Examiner

Tamara L. Graysay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10-24, 26, 27 and 29-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7, 11-24, 33-37 and 40-42 is/are allowed.
- 6) ☒ Claim(s) 10, 26, 27, 29-32, 38 and 39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 10 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 10 is dependent upon claim 9, a canceled claim.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10, line 1: "the bracket connector members" lacks antecedent basis.

Claim 10, line 3: "the support frame connector members" lacks antecedent basis.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 26-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Seats (previously cited, US-6243979).

Claim 26: Seats discloses a tree-mounting bracket (e.g., 46,123) and a horizontal frame including a horizontal end member (34) and two horizontal side members (40,42) pivotally coupled (52) to the end member. The side members can be folded (FIG. 5) and the frame is generally U-shaped (FIG. 3).

The recitation of the blind in the “adapted for” clause does not impart any patentable weight to the claim insofar as the limitation is in a functional clause and the statement does not cooperate the horizontal frame with the particular features of the blind that are recited in the preamble, i.e., the opening, sides, bottom, but instead cooperates the blind with the tree. Moreover, the blind is not included in the scope of the claim, thus the features of the blind set forth in the preamble are not a patentable distinction in the claims that are directed to the support alone.

Claim 27: The bracket (46) includes two connector members (48) and the support frame includes two connector members (40C,42C) that removably mount to the bracket connector members (FIG. 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seats (previously cited, US-6243979) as applied to claim 26 above, and further in view of Shelton (previously cited, US-6434877).

Claim 29: Shelton teaches a bracket comprising a lateral member (portion 40a as depicted in FIG. 8) two connector members (27a,27b) at opposing ends of the lateral member (see FIG. 8), two tree-mounting members (30a,30b) extending vertically from the lateral member (see FIG. 9), and a tree-circumscribing strap (the portion of the strip between 43a and 43b as well as portion 40b as depicted in FIGS. 7-9) coupled to tree mounting members. Shelton suggests use of the particular bracket in combination with a support frame (20a,20b) that extends from the bracket for supporting a blind. The members of the bracket provide a secure connection with the irregular shaped tree trunk.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tree mounting bracket of Stuart to include a bracket having lateral member, two connector members, two tree-mounting members, and a strap, such as taught by Shelton, in order to securely connect the blind to the irregular shaped tree trunk.

5. Claims 30-32, 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dauphinee (previously cited, US-2511497) in view of Neugebauer (previously cited, US-2003/0012563).

Claims 30-32: Dauphinee discloses a filtration unit (10) comprising a scent-elimination element (granular activated carbon 12 (3:6-9)), an air mover (motor 21 and fan 22,23) for drawing scent-carrying air across the scent-elimination element and directing the now unscented air out (3:51-55). The device is adapted for use in a hunting environment insofar as the device is portable, moves air across a scent-elimination element, and exhausts unscented air.

Dauphinee lacks a portable power source.

Neugebauer teaches a portable power source and remote on/off control for a space heater. Space heater and scent-elimination systems are both capable of use in the hunting environment. The remote control enables remote modulation of the power to the device.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the electric power source of Dauphinee to include a portable power source and remote on/off control switch, such as suggested by Neugebauer, in order to provide modulation of the power to the scent-elimination filtration unit.

The claims, as evidenced by the preamble, are drawn to the subcombination of the filtration unit alone, not in combination with the hunting blind. The recitation of the air outlet opening and air outlet opening does not define over the inlet and exhaust port of

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Dauphinee that is “adapted for” the use intended as broadly recited. The recitation of the blind in the “adapted for” clause does not impart any patentable weight to the claim insofar as the limitation is in a functional clause and the references as applied are capable of the recited use. Moreover, the blind is not included in the scope of the claim, thus the features of the blind set forth in the preamble are not a patentable distinction in the claims that are directed to the filtration unit alone.

Claims 38 and 39: The first portion of Dauphinee includes the exhaust portion 15 and the attached tubing 20 containing the air mover (23) are capable of being extendable through an opening in a hunting blind. The second portion of Dauphinee includes the canister containing the scent-elimination element (12) having a shoulder (at the end of the canister adjacent opening 15 near reference character 16) that is capable of being supported by the hunting blind.

Allowable Subject Matter

6. Claims 1-7, 11-24, 33-37 and 40-42 are allowed.
7. Claim 10 would be allowable if rewritten to overcome the objection and the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter:

See applicant's arguments as presented on page 11, line 20 through page 12, line 11.

Response to Arguments

9. Applicant's arguments filed 18 September 2006 have been fully considered but they are not persuasive.

Claim 26: The claim and the claims dependent thereon, are directed to the blind support alone. Therefore, the further limitations directed to the features of the blind itself are not patentable distinctions over the prior art.

The recitation of the blind in the "adapted for" clause does not impart any patentable weight to the claim insofar as the limitation is in a functional clause and the statement does not cooperate the horizontal frame with the particular features of the blind that are recited in the preamble, i.e., the opening, sides, bottom, but instead cooperates the blind with the tree. Moreover, the blind is not included in the scope of the claim, thus the features of the blind set forth in the preamble are not a patentable distinction in the claims that are directed to the support alone.

Claim 30: The claim and the claims dependent thereon, are directed to the filtration unit alone. Therefore, the further limitations directed to the features of the blind itself are not patentable distinctions over the prior art.

The claims, as evidenced by the preamble, are drawn to the subcombination of the filtration unit alone, not in combination with the hunting blind. The recitation of the air outlet opening and air outlet opening does not define over the inlet and exhaust port of Dauphinee that is "adapted for" the use intended as broadly recited. The recitation of the blind in the "adapted for" clause does not impart any patentable weight to the claim

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insofar as the limitation is in a functional clause and the references as applied are capable of the recited use. Moreover, the blind is not included in the scope of the claim, thus the features of the blind set forth in the preamble are not a patentable distinction in the claims that are directed to the filtration unit alone.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

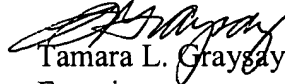
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is 571-272-6728. The examiner can normally be reached on Mon - Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Cuomo, can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Tamara L. Graysay
Examiner
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